

TEAM ADA TO ATTACK CRIMINALIZATION (ATAC)

OUTMemphis and the Use of the Americans with Disabilities Act

OUTMemphis v. Skremetti (formerly *OUTMemphis v. Lee*), is a Tennessee-based lawsuit that argues the state’s law criminalizing sex work and prostitution performed by people living with HIV — called the “aggravated prostitution statute”— is unfair, illegal, and a violation of the U.S. Constitution, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.

In Tennessee, the law treats prostitution as a misdemeanor, but makes it a felony if the person knows they are living with HIV. A felony has much more severe penalties, as explained below:

OFFENSE	DEFINITION	PENALTIES
Prostitution	Engaging in, or offering to engage in, sexual activity as a business or being an inmate in a house of prostitution or loitering in a public place for the purpose of being hired to engage in sexual activity.	Misdemeanor Penalties: • Up to 6 months imprisonment • Up to \$500 in fines
Aggravated Prostitution	Engaging in, or offering to engage in, sexual activity as a business or being an inmate in a house of prostitution or loitering in a public place for the purpose of being hired to engage in sexual activity and knowing they are living with HIV.	Felony Penalties:* • 3–15 years in prison • Up to \$10,000 in fines

*Until June 30, 2024, people convicted of aggravated prostitution were also required to register on the sex offense registry (SOR) for life. As of July 1, 2024, the Tennessee legislature reformed the law, removing exposure to HIV from the list of “violent sexual offenses” requiring SOR registration. This is a favorable result.

The Legal Claims in *OUTMemphis*

OUTMemphis, a Memphis-based LGBTQ+ nonprofit, and four women living with HIV who were convicted under Tennessee’s “aggravated prostitution” law filed a lawsuit against state officials challenging the statute. They argue the law is discriminatory, scientifically outdated, unconstitutional, does not prevent harm, and punishes people based on their disability status. The case could also present an opportunity to pursue challenges to other HIV criminalization laws across the United States. There are several legal arguments, called “legal claims,” each challenging Tennessee’s HIV-specific penalties and sex offense registry requirements.

OUTMEMPHIS LEGAL CLAIMS BASED ON THE U.S. CONSTITUTION

Equal Protection Claims: Argues that Tennessee treats people living with HIV differently from others without a valid reason, violating the law of protecting all citizens equally.

Substantive Due Process Claims: Argues that Tennessee discriminates toward people living with HIV and has no legal reason or government interest to do so.

Eighth Amendment Claims: Argues that enforcing the law and lifetime registration requirements create cruel and unusual punishment, a violation of the Eighth Amendment.

Ex Post Facto Claims: Argues that Tennessee unlawfully increased registry penalties after some individuals had already been convicted, and this is considered retroactive.

OUTMEMPHIS LEGAL CLAIMS BASED ON FEDERAL LAW

Americans with Disabilities Act (ADA) Claims:

Argues that Tennessee illegally discriminates against people living with HIV by forcing an increased punishment and registry requirements based on HIV status.

Rehabilitation Act Claims: Argues that since Tennessee state agencies (courts, corrections, registry system, attorney general, etc), receive federal funds, they must follow anti-discrimination rules, instead they are violating them with HIV-specific penalties.

► The ADA and Rehabilitation Act Claims: Key Differences

ADA CLAIM

What is the ADA?

A federal civil rights law that protects people with disabilities against discrimination. This includes protection from treating a person worse, forcing additional challenges because of their disability; as when a state adds penalties or denies equal treatment solely based on a medical condition such as HIV.

The ADA also prohibits state governments from discriminating against individuals because of their disability. **OUTMemphis is the first case to directly challenge a state HIV criminalization law using the ADA.**

What is the effect of an ADA claim?

If successful, it allows a court to prohibit applying state laws or practices that force harsher penalties because of a person's disability. Also it would make it illegal under federal law for Tennessee to continue forcing increased criminal sentences and lifetime registration for people living with HIV.

How is the ADA applied to the OUTMemphis case?

HIV is a covered disability under the ADA.

The complaint argues that the aggravated prostitution enhancement discriminates "by reason of" disability because the only difference between prostitution and aggravated prostitution is HIV status.

REHABILITATION ACT CLAIM

What is the Rehabilitation Act?

A federal civil rights law that prohibits discrimination against people with disabilities by programs and agencies that receive federal funding.

Why make a Rehabilitation Act claim?

Because it clearly applies to state agencies that receive federal funding, the Rehabilitation Act provides another avenue for challenging discrimination, even where the ADA's authority might be challenged.

However, using the Rehabilitation Act requires proving that the harsher treatment is only based on a person's HIV status rather than any difference in their behavior, risk or concerns for public safety.

How is the Rehabilitation Act applied to Tennessee?

The claim argues:

1. Tennessee agencies (courts, corrections, registry system, attorney general, etc.) receive federal funds, so they must follow Rehabilitation Act's anti-discrimination rules.
2. The aggravated prostitution law is a state "program or activity" funded in part by federal money.
3. The aggravated prostitution law discriminates against people living with HIV "solely because of" their disability status, in violation of the Rehabilitation Act.

Recent Developments in the Fight Against HIV Criminalization Using the Americans with Disabilities Act

Department of Justice Findings: The United States Department of Justice (DOJ) enforces federal laws, including the ADA. It can intervene when state laws appear to violate federal laws.

CHLP filed a complaint with the DOJ that argues disability-based discrimination by HIV criminalization laws in Tennessee. After an investigation, the DOJ found that, “The state subjects people living with HIV to harsher criminal penalties solely because of their HIV status in violation of Title II of the ADA.” This is an important finding and a favorable result.

Recent Developments in Tennessee:

1. The DOJ filed *United States v. Tennessee*, a lawsuit against Tennessee for violating the ADA to follow its recommendations to address the discrimination.
2. A settlement with the DOJ ended enforcement of the aggravated prostitution enhancement in Shelby County (Tennessee).
3. Sex offense registry (SOR) requirements tied to the aggravated prostitution law were reversed by the Tennessee legislature.
4. A separate settlement between the *OUTMemphis* team and the State of

Tennessee implemented the legislative reforms, resulting in everyone solely on the registry for an aggravated prostitution conviction being removed.

5. At the end of the Biden administration, the DOJ formally ended the litigation in *United States v. Tennessee*.

Current Status of *OUTMemphis*:

In March 2026, a Tennessee district court ruled on the state’s “motion to dismiss” the case. The court decided to agree to one part and deny another part. **Most notably, the ADA claim was allowed to proceed.** The ruling affirmed that the ADA does protect against discrimination within the criminal legal system. Based on the initial court documents, the court plausibly found that HIV criminalization laws, such as the aggravated prostitution statute in Tennessee, discriminate against people living with HIV, a protected disability, by subjecting them to heightened punishment. Moreover, it recognized that groups like *OUTMemphis* are appropriate plaintiffs to bring litigation against these discriminatory laws. The court dismissed several other claims, including those brought under the Rehabilitation Act and the U.S. Constitution. The case will now proceed into the next phase of litigation.

► Beyond *OUTMemphis*: Expanding ADA-based Advocacy

ADVOCATE AS INDIVIDUALS:

- **Learn how to challenge unfair treatment** and how the ADA’s protections extend beyond the criminal legal system and protect PLHIV from discrimination in housing, employment, and public services.

SUPPORT LITIGATION:

- **Watch for similar laws** in your state.
- **Connect impacted individuals** with legal organizations.
- **Create factual records** showing how laws operate in practice.

ADVANCE LEGISLATIVE REFORM THROUGH COALITION WORK:

- **Center the lived experiences of people living with HIV** in testimony, data, storytelling, and advocacy support.
- **Fight for lawmakers to repeal or change discriminatory statutes** by using the DOJ’s findings and legal arguments.
- **Recognize reform as a civil rights issue**, not just a public health update.

FOR MORE INFORMATION ON TEAM ATAC VISIT [HIVLAWANDPOLICY.ORG/TEAM-ATAC](https://hivlawandpolicy.org/team-atac).